

REFERENCE TITLE: **unemployment insurance; omnibus**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# **HB 2173**

Introduced by  
Representative Fann

AN ACT

AMENDING SECTIONS 23-727, 23-772, 23-787 AND 29-857, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 23-727, Arizona Revised Statutes, is amended to  
3 read:

4 **23-727. Credits and charges to employer accounts**

5 A. The commission shall maintain a separate account for each employer  
6 and shall credit the account with all contributions and payments in lieu of  
7 contributions paid by the employer and shall charge the account with all  
8 benefits chargeable to it.

9 B. Nothing in this chapter shall be construed to grant any employer or  
10 individuals in its service prior claims or rights to the amounts paid by the  
11 employer into the fund.

12 C. Except as otherwise provided in subsections D, E, F, G, I and J of  
13 this section and sections 23-773 and 23-777, benefits paid to an individual  
14 shall be charged against the accounts of the individual's base-period  
15 employers. The amount of benefits so chargeable against each base-period  
16 employer's account shall bear the same ratio to the total benefits paid to an  
17 individual as the base-period wages paid to the individual by the employer  
18 bear to the total amount of base-period wages paid to the individual by all  
19 the individual's base-period employers.

20 D. Benefits paid to an individual whose separation from work with any  
21 employer occurs under conditions found by the commission to be within those  
22 prescribed by section 23-775, paragraph 1 or 2 or for compelling personal  
23 reasons not attributable to the employer and not warranting disqualification  
24 for benefits shall not be used as a factor in determining the future  
25 contribution rate of the employer from whose employment the individual so  
26 separated, but the employer shall establish the condition of such separation  
27 to the satisfaction of the commission by submitting information the  
28 commission requires within ten days after the date of notification or mailing  
29 of notice by the commission that the individual has first filed a claim for  
30 benefits.

31 E. Benefits paid to an individual who, during the individual's base  
32 period, earned wages for part-time employment with an employer shall not be  
33 used as a factor in determining the future contribution rate of that employer  
34 if the employer continues to give employment opportunities to the individual  
35 to the same extent while the individual is receiving benefits as during the  
36 base period and the employer submits information the commission may require  
37 within ten working days after the date of notification or mailing of notice  
38 by the commission that the individual has first filed a claim for benefits.  
39 The commission has the burden of proof to establish that the employer failed  
40 to give employment opportunities to the individual to the same extent as  
41 during the base period.

1       F. Benefits paid to an individual whose employment was terminated by  
2 retirement pursuant to a nongovernmental retirement or lump sum retirement  
3 pay plan under which the age of mandatory retirement has been agreed on  
4 between the employer and its employees or by the bargaining agent  
5 representing such employees shall not be used as a factor in determining the  
6 future contribution rate of that employer but the employer shall establish  
7 that fact by submitting information the commission may require within ten  
8 days after the date of notification or mailing of notice by the commission  
9 that the individual has first filed a claim for benefits.

10     G. Benefits paid pursuant to section 23-771, subsections B and D shall  
11 not be used as a factor in determining the future contribution rate of the  
12 affected base-period employers.

13     H. A determination that benefits paid shall be used in determining  
14 future contribution rates of the employer may be appealed by the employer in  
15 the same manner provided for appeals of benefit determinations.

16     I. Benefits paid to an individual whose employment was terminated  
17 because the individual's employer was called to active duty in the military  
18 shall not be used as a factor in determining the future contribution rate of  
19 the employer from whose employment the individual was terminated.

20     J. Benefits paid to an individual whose employment was terminated  
21 because a former employee of the employer returned to work for the employer  
22 after being called to active duty in the military shall not be used as a  
23 factor in determining the future contribution rate of the employer from whose  
24 employment the individual was terminated.

25     K. A BASE-PERIOD EMPLOYER'S ACCOUNT SHALL NOT BE RELIEVED OF CHARGES  
26 RELATED TO BENEFITS PAID TO AN INDIVIDUAL IF THE DEPARTMENT DETERMINES THAT  
27 BOTH OF THE FOLLOWING ARE TRUE:

28       1. THE PAYMENT WAS MADE BECAUSE THE EMPLOYER OR AN AGENT OF THE  
29 EMPLOYER FAILED TO RESPOND TIMELY OR ADEQUATELY TO A REQUEST FROM THE  
30 DEPARTMENT FOR INFORMATION RELATING TO THE COMPENSATION CLAIM.

31       2. THE EMPLOYER OR AGENT HAS A PATTERN OF FAILING TO RESPOND TIMELY OR  
32 ADEQUATELY TO THESE REQUESTS.

33     L. THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT SUBSECTION K OF THIS  
34 SECTION.

35     Sec. 2. Section 23-772, Arizona Revised Statutes, is amended to read:  
36     23-772. Claims for benefits; notice to employer; posting  
37                   printed statements dealing with claims

38       A. Claims for benefits shall be made in accordance with such  
39 regulations as the department prescribes.

40       B. All ~~base-period~~ BASE-PERIOD employers of a claimant for benefits  
41 shall be promptly notified when a claimant files ~~an initial~~ A PAYABLE  
42 CONTINUED claim for benefits during a period of unemployment.

1       C. Each employer shall post and maintain printed statements dealing  
2 with claims for benefits in places readily accessible to individuals in ~~his~~  
3 ~~THE EMPLOYER'S~~ service, and shall make available to each individual at the  
4 time ~~he~~ ~~THE INDIVIDUAL~~ becomes unemployed, a printed statement dealing with  
5 claims for benefits. Printed statements shall be supplied by the department  
6 to each employer without cost.

7       Sec. 3. Section 23-787, Arizona Revised Statutes, is amended to read:  
8       23-787. Repayment of and deductions for benefits obtained by  
9       claimants not entitled to benefits; collection

10      A. A person who receives any amount as benefits under this chapter to  
11 which the person is not entitled is liable to repay the overpaid amount to  
12 the department. The department may deduct all or a portion of the  
13 overpayment from future benefits payable to the person under this chapter.

14      B. If benefits to which a person is not entitled are received by  
15 reason of fraud ~~COMMITTED BY THE PERSON~~ as determined by the department, ~~THE~~  
16 ~~DEPARTMENT SHALL ASSESS A PENALTY ON THE PERSON EQUAL TO FIFTEEN PER CENT OF~~  
17 ~~THE AMOUNT OF THE ERRONEOUS PAYMENT AND~~ the person is not eligible to receive  
18 any benefits under this chapter until the total amount of the overpayment has  
19 been recovered or otherwise satisfied in compliance with a civil judgment.  
20 ~~THE DEPARTMENT SHALL IMMEDIATELY DEPOSIT ALL ASSESSMENTS PAID PURSUANT TO~~  
21 ~~THIS SUBSECTION IN THE UNEMPLOYMENT COMPENSATION FUND ESTABLISHED BY SECTION~~  
22 ~~23-701.~~

23      C. If benefits to which a person is not entitled are received without  
24 any fault on the person's part and if repayment or deduction from future  
25 benefits would be against equity and good conscience, the department may  
26 waive all or a portion of the amount overpaid.

27      D. If benefits to which a person is not entitled are received without  
28 any fault on the person's part, deductions made by the department pursuant to  
29 subsection A ~~OF THIS SECTION~~ from benefits payable to an individual for any  
30 week shall not exceed twenty-five per cent of the individual's weekly benefit  
31 amount unless required by federal law, except that the amount recouped from  
32 benefits payable may be fifty per cent of the weekly benefit amount if the  
33 individual has previously received benefits but has not received benefits for  
34 at least twelve consecutive months ~~prior to~~ BEFORE the most recent receipt of  
35 benefits and there has been no reasonable attempt to repay the indebtedness  
36 during that period. The fifty per cent recoupment rate may not be put in  
37 effect ~~prior to~~ BEFORE one year after the establishment of the overpayment.

38      E. The department shall adopt rules to implement ~~the provisions of~~  
39 subsection D ~~OF THIS SECTION~~.

40      F. The attorney general or the appropriate county attorney may  
41 institute appropriate court proceedings to recover in the name of the  
42 department any amount for which a person is liable to the department.

1        Sec. 4. Section 29-857, Arizona Revised Statutes, is amended to read:  
2        **29-857. Taxation**

3           A limited liability company established under this chapter or a foreign  
4        limited liability company transacting business in this state pursuant to this  
5        chapter shall pay the taxes that are imposed by the laws of this state or any  
6        political subdivision of this state on domestic and foreign limited  
7        partnerships on an identical basis, except that, for purposes of **TITLE 23,**  
8        **CHAPTER 4 AND** title 43, a domestic or foreign limited liability company and  
9        its members shall be taxed as if the limited liability company is either a  
10      partnership or a corporation or is disregarded as an entity as determined  
11      pursuant to the internal revenue code as defined in section 43-105.